UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ROBERT HUDAK,

Plaintiff,

-against-

THE CITY OF NEW YORK, POLICE OFFICER ADAM SCHACHTEL, and POLICE OFFICER BRIAN LITTLE,

Defendants.

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05 Civ. 1914 (LTS)

**AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff Robert Hudak, by and through his attorneys, Emery Celli Brinckerhoff & Abady LLP, for his Amended Complaint alleges as follows:

## INTRODUCTION

1. This case is about the wanton physical abuse of an upstanding citizen by two lawless police officers. Plaintiff Robert Hudak is an educated and successful graphic designer, animator, and musician. Prior to the incident that is the subject of this Amended Complaint, Mr. Hudak had never been arrested, much less charged with a crime.

2. But on the evening of March 31, 2004, Defendants Brian Little and Adam Schachtel – plainclothes officers of the New York City Police Department ("NYPD") – brutally assaulted Mr. Hudak without any warning, provocation, or justification. Defendants Little and Schachtel lifted Mr. Hudak in the air, threw him to the ground, and struck him repeatedly across his head, back, side, and arms. Defendants Little and Schachtel beat Mr. Hudak with such intensity that they broke his arm and knocked him unconscious. All this was done without any

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prior warning from Defendants Little and Schachtel and without any resistance or defense by Mr. Hudak.

3. Mr. Hudak suffered significant physical, emotional, and professional damages as a result of this shameful assault, and he is entitled to compensation. This civil rights action seeks damages for Defendants' violations of Mr. Hudak's rights, privileges, and immunities under the United States Constitution, the Civil Rights Act of 1871, 42 U.S.C. § 1983, the New York State Constitution, and New York State common law.

## THE PARTIES

4. Plaintiff Robert Hudak is a citizen of the United States and resides at 504 Grand Street in New York, New York.

5. Defendant City of New York ("the City") is a municipality organized and existing under the laws of the State of New York. At all times relevant hereto, the City, acting through the NYPD, was responsible for the policy, practice, supervision, implementation, and conduct of all NYPD matters and was responsible for the appointment, training, supervision, and conduct of all NYPD personnel. In addition, at all relevant times, the City was responsible for enforcing the rules of the NYPD, and for ensuring that the NYPD personnel obey the laws of the United States and of the State of New York.

6. At all times relevant hereto, Defendant Brian Little, shield number unknown, was a police officer of the NYPD, acting in the capacity of agent, servant, and employee of the City, and within the scope of his employment as such.

7. At all times relevant hereto, Defendant Adam Schachtel, shield number

25560, was a police officer of the NYPD, acting in the capacity of agent, servant, and employee of the City, and within the scope of his employment as such.

8. At all times relevant hereto, Defendants Little and Schachtel (collectively the "Officer Defendants") were acting under the color of state law.

## JURISDICTION AND VENUE

9. This action arises under the Fourth and Fourteenth Amendments to the United States Constitution, 42 U.S.C. §§ 1983 and 1988, Article I, § 12 of the New York Constitution, and New York state common law.

10. The jurisdiction of this Court is predicated upon 28 U.S.C. §§ 1331, 1343(a)(3) and (4), 1367(a), and the doctrine of pendent jurisdiction.

11. The acts complained of occurred in the Southern District of New York, and venue is lodged in this Court pursuant to 28 U.S.C. § 1391(b).

## JURY DEMAND

12. Plaintiff demands trial by jury in this action.

## FACTUAL ALLEGATIONS

13. Robert Hudak is 31 years old. He holds a bachelor's degree from Youngstown State University, and he works in Manhattan as a successful art director, graphic designer, and animator.

14. Mr. Hudak is also an accomplished professional musician. He plays guitar and piano, writing original music for commercial and online broadcasts. He also has had success

as a local songwriter and performer.

15. Prior to the incident that is the subject of this Amended Complaint, Mr. Hudak had never had any brushes with law enforcement. He had never been arrested, much less charged with any crime.

16. On the evening of March 31, 2004, Mr. Hudak met his old friend, Wayne Lovan, for drinks at Botanica Bar on Houston Street. Mr. Hudak and Mr. Lovan grew up together in Youngstown, Ohio, and they got together that evening because the nephew of one of their longtime mutual friends had recently committed suicide.

17. Mr. Hudak and Mr. Lovan left Botanica together shortly before midnight. As they walked together, Mr. Hudak and Mr. Lovan stopped at or near the corner of Rivington and Ludlow Streets so that Mr. Lovan could smoke marijuana. Mr. Hudak does not smoke marijuana.

18. As Mr. Lovan was attempting to light the marijuana in his pipe, a car pulled up next to Mr. Hudak and Mr. Lovan. Defendant Little was driving the car, and Defendant Schachtel was in the passenger seat. Neither officer was wearing a police uniform, and their car was unmarked.

19. Mr. Hudak was unaware that the two men in the car were police officers, and he was concerned that the two men were staring at him and at Mr. Lovan. Mr. Hudak told the two men to "move along."

20. Defendants Little and Schachtel then came out of their car. Defendant Schachtel approached Mr. Lovan, and Defendant Little approached Mr. Hudak.

21. Defendant Little, who had not identified himself as a police officer, asked

Mr. Hudak what he had in his hands. Mr. Hudak told Defendant Little that he had a cookie, a napkin, a compact disc, and "this thing" – namely, a small canister that had contained the marijuana that Mr. Lovan was smoking.

22. Without any warning, provocation, or justification, Defendant Little grabbed Mr. Hudak, lifted him in the air, and threw him to the ground.

23. Defendants Little and Schachtel then began striking Mr. Hudak repeatedly across his head, his back, his side, and his arms.

24. Mr. Hudak yelled in pain, screaming at Defendants Little and Schachtel that they had broken his collarbone, and begging them to stop striking him. (In fact, Defendants Little and Schachtel had broken his arm, not his collarbone.)

25. Notwithstanding this plea, Defendants Little and Schachtel continued to strike Mr. Hudak repeatedly in the head, back, side, and arms.

26. At no time during this assault did Defendants Little or Schachtel identify themselves to Mr. Hudak as police officers.

27. Mr. Hudak was assaulted so ferociously that he was knocked unconscious. He regained consciousness a few minutes later, finding himself handcuffed and sitting in the back of another police officer's car. He was in excruciating pain. He informed the police officer in that car that he believed his arm was broken.

28. Rather than taking him for medical treatment, Defendants Little and Schachtel arrested Mr. Hudak and transported him to the 7th Precinct. Defendants Little and Schachtel did not arrest Mr. Lovan.

29. At the 7th Precinct, Defendant Schachtel questioned Mr. Hudak

extensively, even though Mr. Hudak was not read his Miranda rights. Mr. Hudak told Defendants Little and Schachtel once again that his arm was broken, but they did not take him for medical treatment, nor did they provide him with any pain medication. Some time later, Mr. Hudak was examined by a medical technician, who recommended that he be taken to the hospital for treatment.

30. Mr. Hudak was transported in an ambulance to NYU Downtown Hospital, where he was x-rayed and given a cat-scan. These tests confirmed that Defendants Little and Schachtel had broken Mr. Hudak's arm.

31. Meanwhile, Mr. Hudak's wife, Jennifer Harper, called Mr. Hudak on his cell phone, worried that he had not returned home. Defendant Schachtel, who had confiscated Mr. Hudak's cell phone, answered the call. He explained to Ms. Harper that Mr. Hudak had been arrested and had been taken to NYU Downtown Hospital. Defendant Schachtel erroneously told Ms. Harper that Mr. Hudak had not broken any bones, notwithstanding Mr. Hudak's insistence that he had.

32. At or about 6:00 a.m. on April 1, Mr. Hudak was returned from NYU Downtown Hospital to the 7th Precinct, where he was placed in a holding cell. Ms. Harper came to the 7th Precinct and was allowed to see her husband. She was shocked and appalled by what she saw. Mr. Hudak's arm was in a sling, and his face was covered with bruises, lacerations, and scrapes.

33. Defendant Schachtel attempted to minimize the extent of Mr. Hudak's injuries, telling Ms. Harper that it was "only road rash."

34. Ms. Harper was not allowed to stay with Mr. Hudak long. When she left,

Defendant Schachtel followed her outside and confronted her. Defendant Schachtel told Ms. Harper that Mr. Hudak was going to be taken to 100 Centre Street for arraignment.

35. Defendant Schachtel further told Ms. Harper that Mr. Hudak should not hire an attorney to represent him at his arraignment because it would be costly, because he likely would get a free attorney, and because it was unlikely that charges would be pressed in light of Mr. Hudak's injuries.

36. On information and belief, Defendant Schachtel attempted to dissuade Ms. Harper from hiring private counsel because he feared being sued for the brutal physical abuse he and Defendant Little had inflicted on Mr. Hudak.

37. Mr. Hudak was transported to 100 Centre Street, where he was processed and placed in a cell with three other men. There were cockroaches in the cell, and there was urine all over the floor. Mr. Hudak was not arraigned until at or about 5:00 p.m. that afternoon – some 17 hours after he was assaulted by Defendants Little and Schachtel.

38. Mr. Hudak was charged with obstruction of government administration; attempted tampering with physical evidence; resisting arrest; and unlawful possession of marijuana.

39. All four charges were subsequently dismissed.

40. Mr. Hudak suffered substantial physical harm as a result of his assault by Defendants Little and Schachtel. He was in so much pain that for weeks he could barely walk and even needed assistance using the bathroom. His cuts and bruises took considerable time to heal. To this day, he still experiences significant pain and numbness in his arm and wrist, and he still cannot sleep comfortably on his side.

41. The injuries that Defendants Little and Schachtel inflicted on Mr. Hudak also substantially impaired his ability to play music (and to earn money doing so). Following his assault, Mr. Hudak was forced to take several months off from writing and performing, turning down many opportunities to earn money and advance his career. To this day, Mr. Hudak's injuries continue to impair his ability to play guitar and piano.

42. Mr. Hudak has also suffered substantial emotional harm. He was terrorized by the attack. He still has nightmares, he still becomes fearful when he walks in the street, and he is still afraid of police officers. As a direct and proximate result of his assault by Defendants Little and Schachtel, Mr. Hudak was forced to undergo psychiatric treatment.

43. Mr. Hudak's assault by Defendants Little and Schachtel also harmed him professionally. Mr. Hudak could not work after the incident and lost several graphic design and animation projects as a result. He has also suffered significant reputational injury.

44. The City knew or should have known that Defendant Schachtel is prone to violence and was likely to engage in the use of unjustified physical force. On information and belief, Defendant Schachtel has been involved in at least one other unjustified use of force incident, in which a man was taken to a secluded area and beaten up. In addition, on information and belief, Defendant Schachtel once stole money that he was supposed to have stored for safekeeping after it was found at a crime scene.

45. Within ninety days after the claim alleged in this Amended Complaint arose, a written notice of claim was served upon Defendants by personal delivery of the notice, in duplicate, to the Comptroller's office at 1 Centre Street, New York, New York.

46. At least thirty days have elapsed since the service of the notice of claim,

and adjustment or payment of the claim has been neglected or refused.

47. This action has been commenced within one year and ninety days after the happening of the event upon which the claim is based.

**FIRST CAUSE OF ACTION**
42 U.S.C. § 1983 – Excessive Force
(Against the Officer Defendants)

48. Plaintiff repeats and realleges the foregoing paragraphs as if the same were fully set forth at length herein.

49. By using excessive force and assaulting Mr. Hudak, the Officer Defendants deprived Plaintiff of rights, remedies, privileges, and immunities guaranteed to every citizen of the United States, in violation of 42 U.S.C. § 1983, including, but not limited to, rights guaranteed by the Fourth and Fourteenth Amendments to the United States Constitution.

50. In addition, the Officer Defendants conspired among themselves to deprive Plaintiff of his constitutional rights secured by 42 U.S.C. § 1983 and by the Fourth and Fourteenth Amendments to the United States Constitution, and took numerous overt steps in furtherance of such conspiracy, as set forth above.

51. The Officer Defendants acted under pretense and color of state law and in their individual and official capacities and within the scope of their respective employments as NYPD officers. Said acts by the Officer Defendants were beyond the scope of their jurisdiction, without authority of law, and in abuse of their powers, and said Defendants acted willfully, knowingly, and with the specific intent to deprive Plaintiff of his constitutional rights secured by 42 U.S.C. § 1983, and by the Fourth and Fourteenth Amendments to the United States

Constitution.

52. As a direct and proximate result of the misconduct and abuse of authority detailed above, Plaintiff sustained the damages herein before alleged.

## SECOND CAUSE OF ACTION

New York State Constitution, Art. I, § 12
(Against All Defendants)

53. Plaintiff repeats and realleges the foregoing paragraphs as if the same were fully set forth at length herein.

54. By using excessive force and assaulting Mr. Hudak, the Officer Defendants deprived Plaintiff of rights, remedies, privileges, and immunities guaranteed to every New Yorker by Article I, § 12 of the New York Constitution.

55. In addition, the Officer Defendants conspired among themselves to deprive Plaintiff of his constitutional rights secured by Article I, § 12 of the New York Constitution, and took numerous overt steps in furtherance of such conspiracy, as set forth above.

56. The Officer Defendants acted under pretense and color of state law and in their individual and official capacities and within the scope of their respective employments as NYPD officers. Said acts by the Officer Defendants were beyond the scope of their jurisdiction, without authority of law, and in abuse of their powers, and said Defendants acted willfully, knowingly, and with the specific intent to deprive Plaintiff of his constitutional rights secured by Article I, § 12 of the New York Constitution.

57. Defendants, their officers, agents, servants, and employees were responsible for Plaintiff's deprivation of his state constitutional rights. The City, as the employer

of each of the Officer Defendants, is responsible for their wrongdoing under the doctrine of respondeat superior.

58. As a direct and proximate result of the misconduct and abuse of authority detailed above, Plaintiff sustained the damages hereinbefore alleged.

**THIRD CAUSE OF ACTION**
Assault
(Against All Defendants)

59. Plaintiff repeats and realleges the foregoing paragraphs as if the same were fully set forth at length herein.

60. Defendants, acting within the scope of their employment, intentionally, willfully, and maliciously assaulted Plaintiff in that they had the real or apparent ability to cause imminent harmful and/or offensive bodily contact and intentionally did violent and/or menacing acts which threatened such contact to Plaintiff, and that such act(s) caused apprehension of such contact in Plaintiff.

61. Defendants, their officers, agents, servants, and employees were responsible for Plaintiff's assault. The City, as the employer of each of the Officer Defendants, is responsible for their wrongdoing under the doctrine of respondeat superior.

62. As a direct and proximate result of the misconduct and abuse of authority detailed above, Plaintiff sustained the damages hereinbefore alleged.

**FOURTH CAUSE OF ACTION**
Battery
(Against All Defendants)

63. Plaintiff repeats and realleges the foregoing paragraphs as if the same were fully set forth at length herein.

64. Defendants, acting within the scope of their employment, intentionally, willfully, and maliciously battered Plaintiff when they, in a hostile and/or offensive manner, struck Plaintiff without his consent, and with the intention of causing harmful and/or offensive bodily contact to Plaintiff.

65. Defendants, their officers, agents, servants, and employees were responsible for Plaintiff's battery. The City, as employer of each of the Officer Defendants, is responsible for their wrongdoing under the doctrine of respondeat superior.

66. As a direct and proximate result of the misconduct and abuse of authority detailed above, Plaintiff sustained the damages hereinbefore alleged.

**FIFTH CAUSE OF ACTION**
Negligence
(Against All Defendants)

67. Plaintiff repeats and realleges the foregoing paragraphs as if the same were fully set forth at length herein.

68. Defendants owed a duty of care to Plaintiff.

69. Defendants breached that duty of care by assaulting, attacking, and beating Plaintiff with extreme force and by breaking Plaintiff's arm.

70. As a direct and proximate result of this unlawful conduct, Plaintiff

sustained the damages hereinbefore alleged.

71. All of the foregoing occurred without any fault or provocation by Plaintiff.

72. Defendants, their officers, agents, servants, and employees were responsible for this unlawful conduct. The City, as the employer of the Officer Defendants, is responsible for their wrongdoing under the doctrine of respondeat superior.

**SIXTH CAUSE OF ACTION**
42 U.S.C. § 1983 -- Malicious Prosecution
(Against the Officer Defendants)

73. Plaintiff repeats and realleges the foregoing paragraphs as if the same were fully set forth at length herein.

74. The Officer Defendants maliciously commenced criminal proceedings against Plaintiff, charging him with attempted tampering with physical evidence, obstruction of governmental administration, and resisting arrest.

75. The Officer Defendants charged Plaintiff with these crimes falsely, maliciously, in bad faith, and without probable cause.

76. After proceedings in criminal court in which Plaintiff was forced to defend himself, all charges against Plaintiff were terminated in Plaintiff's favor.

77. As a direct and proximate result of the misconduct and abuse of authority detailed above, Plaintiff sustained the damages hereinbefore alleged.

**SEVENTH CAUSE OF ACTION**
Malicious Prosecution
(Against all Defendants)

78. Plaintiff repeats and realleges the foregoing paragraphs as if the same were fully set forth at length herein.

79. The Officer Defendants maliciously commenced criminal proceedings against Plaintiff, charging him with attempted tampering with physical evidence, obstruction of governmental administration, and resisting arrest.

80. The Officer Defendants charged Plaintiff with these crimes falsely, maliciously, in bad faith, and without probable cause.

81. After proceedings in criminal court in which Plaintiff was forced to defend himself, all charges against Plaintiff were terminated in Plaintiff's favor.

82. Defendants, their officers, agents, servants, and employees were responsible for the malicious prosecution of plaintiff during this period of time. Defendant City, as employer of the Officer Defendants, is responsible for their wrongdoing under the doctrine of respondeat superior.

83. As a direct and proximate result of the misconduct and abuse of authority detailed above, Plaintiff sustained the damages hereinbefore alleged.

**EIGHTH CAUSE OF ACTION**
Negligent Hiring and Retention of
Employment Services
(Against the City)

84. Plaintiff repeats and realleges the foregoing paragraphs as if the same were fully set forth at length herein.

85. The City, through the NYPD, owed a duty of care to Plaintiff to prevent the physical and mental abuse sustained by Plaintiff. Under the same or similar circumstances, a reasonable, prudent, and careful person would have anticipated that an injury to Plaintiff or to those in a like situation would probably result from this conduct.

86. Upon information and belief, the Officer Defendants were unfit and incompetent for their positions as police officers.

87. Upon information and belief, the City knew or should have known through the exercise of reasonable diligence that the Officer Defendants were dangerous.

88. Upon information and belief, the City's negligence in hiring and retaining the Officer Defendants proximately caused Plaintiff's injuries.

89. Upon information and belief, because of the City's negligent hiring and retention of the aforementioned Officer Defendants, Plaintiff incurred significant and lasting physical, mental, and professional injuries.

WHEREFORE, Plaintiff respectfully request judgment against Defendants as follows:

(a) On the First Claim for Relief against the Officer Defendants, compensatory and punitive damages in an amount to be determined at trial, and reasonable attorneys' fees and costs under 42 U.S.C. § 1988;

(b) On the Second Claim for Relief against all Defendants, compensatory damages in an amount to be determined at trial, and punitive damages against the Officer Defendants in an amount to be determined at trial;

(c) On the Third Claim for Relief against all Defendants, compensatory damages in an amount to be determined at trial, and punitive damages against the Officer Defendants in an amount to be determined at trial;

(d) On the Fourth Claim for Relief against all Defendants, compensatory damages in an amount to be determined at trial, and punitive damages against the Officer Defendants in an amount to be determined at trial;

(e) On the Fifth Claim for Relief against all Defendants, compensatory damages in an amount to be determined at trial, and punitive damages against the Officer Defendants in an amount to be determined at trial;

(f) On the Sixth Claim for Relief against the Officer Defendants, compensatory and punitive damages in an amount to be determined at trial, and reasonable attorneys' fees and costs under 42 U.S.C. § 1988;

(g) On the Seventh Claim for Relief against all Defendants, compensatory damages in an amount to be determined at trial, and punitive damages against the Officer Defendants in an amount to be determined at trial;

(h) On the Eighth Claim for Relief against the City, compensatory damages in an amount to be determined at trial; and

(i) Such other and further relief as this Court may deem just and proper.

Dated: New York, New York
March 24, 2005

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